



05 DEC 2007

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Foley Hoag LLP
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In re Application of	:	
LI et al.	:	
Application No.: 10/500,932	:	DECISION ON PETITION
PCT No.: PCT/US03/00377	:	
Int. Filing Date: 08 January 2003	:	
Priority Date: 09 January 2002	:	
Attorney Docket No.: TRA-029.01	:	
For: EFFICIENT LIPOSOMAL	:	
ENCAPSULATION	:	

This decision is issued in response to applicants' "Petition for Withdrawal of Holding of Abandonment" filed 02 November 2006, which is being treated as petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 08 January 2003, applicants filed international application PCT/US03/00377 which claimed a priority date of 09 January 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 24 July 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 09 July 2004.

On 08 July 2004, applicants filed a Transmittal Letter for entry into the national stage accompanied, *inter alia*, by: the requisite basic national fee; a copy of the international application, and an application data sheet.

On 16 February 2005, the United States Designated Office (DO/EO/US) mailed a Notification Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a signed oath/declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) together with a surcharge payment were required. The notification set a two-month time limit in which to respond.

On 12 July 2006, the United States Elected Office mailed a Notification of Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 16 February 2005 within the time period set therein.

On 02 November 2006, applicants filed the present petition which was accompanied, among other things: a copy of the declaration and power of attorney filed 19 September 2005; a post card receipt dated 19 September 2005; and a transmittal letter dated 19 September 2005.

DISCUSSION

A. Petition for Withdrawal of Holding of Abandonment

Applicants state in their present petition that a declaration was received at the United States Patent and Trademark Office on 19 September 2005. A review of the present application reveals that the declaration filed 19 September 2005 is not located therein. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Here, applicants have provided a copy of their date-stamped filing receipt. The receipt identifies the application by applicant, title of invention, and application number. The receipt itemizes a declaration executed by the inventors. The receipt is stamped "Rec'd. OIPE SEP19, 2005" across its face is sufficient to indicate that the declaration was in fact received in the Office on 19 September 2005.

B. Defective Declaration

The declaration executed by Tong Shangguan is defective and is insufficient to satisfy the oath or declaration requirement of 35 CFR 371(c)(4) for entry into the national stage in the United States of America. Specifically, the declaration submitted includes an alteration that has not been initialed and dated by the inventor. (See MPEP §605.04(a) and 37 CFR 1.52(c)) Further, it appears that the declaration has been altered to correct the inventor's name. If this is the case, an explanation pursuant to Manual of Patent Examining Procedure §201.03 or §605.04(a) is required.

CONCLUSION

Applicant's petition for withdrawal of holding of abandonment under 37 CFR 1.181 is GRANTED.

A proper response must be filed within **ONE MONTH** from the mail date of this decision and must include a declaration in compliance with 37 CFR 1.497(a)-(b) executed by Tong Shangguan and an explanation pursuant to Manual of Patent Examining Procedure §201.03 or §605.04(a). No extensions of this time limit may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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